



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1996

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum, P.C.
General Counsel
Dallas Independent School District
3700 Ross Avenue, Box 69
Dallas, Texas 75204-5491

OR96-1952

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101530.

The Dallas Independent School District (the "school district") received a request for the personnel file of Damita Davis, a high school English teacher with the school district from 1991 through 1993. You have submitted to this office some records, which you assert are responsive to the request.¹ In your letter to this office, you indicate that the school district intends to release the employee's file with the exception of certain documents.² You contend that the school district may withhold some of requested information from required public disclosure. We have considered the arguments you make and have reviewed the documents at issue. We agree with your contention that some of the requested information is not subject to disclosure.

¹You state that you have "marked the requested documents precisely to indicate the information we consider protected." However, after a careful review of the submitted records it is unclear to us, which information you agree to disclose and which information you seek to withhold. In the future, we advise you to undertake to mark, clearly and specifically, the information you seek to withhold with the exceptions you claim.

²Because you argue that only certain categories of information are excepted from required public disclosure, *see infra*, this office assumes that the school district is making all of the remaining information available to the requestor. This ruling does not authorize the withholding of any information not discussed herein.

In your initial letter to this office, you explained which documents you seek to withhold, however, you did not raise any specific exceptions pursuant to the Texas Open Records Act, nor did you cite to any particular statute. However, it is evident from the type of information requested and submitted to this office that section 552.101 of the Government Code is the applicable exception for much of this type of information. We also note that per our notification, dated September 9, 1996, you did provide our office with some records and raised section 552.102 and 552.117 of the Government Code as applicable to the requested information. The exceptions implicated in this request, sections 552.101, 552.102, and 552.117 of the Government Code, except from public disclosure information that is made confidential by law.³ Because the distribution of confidential information is a criminal offense, *see* Gov't Code § 552.352, we will discuss the applicability of these exceptions to the types of information at issue in the current request.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides:

A document evaluating the performance of a teacher or administrator is confidential.

This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that, for purposes of section 21.355, a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Although you have not submitted any information which could be considered a teacher evaluation, presumably as the request is for personnel files from 1991 through 1993, the requested information includes some teacher evaluations. Therefore, we conclude that, to the extent the requested records constitute teacher evaluations, you must withhold these records from public disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

The requested records contain information that is confidential and excepted from disclosure under section 552.101, in conjunction with section 5.08(b) of the Medical

³ The Office of the Attorney General will raise section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Practice Act (the "MPA"). Section 5.08(b) of the MPA, article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Therefore, the medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See § 5.08(c), (j).

You have claimed that section 552.102(a) excepts some of the requested information from disclosure. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act.

You claim that the submitted college transcripts are excepted from disclosure. Section 552.102(b) excepts from disclosure a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, with the exception of the degree obtained and the curriculum. The school district must edit from the transcript all information other than the employee's name, the degree obtained, and the courses taken. Open Records Decision No. 526 (1989) at 2-3. The remaining information must be released to the requestor.

We will next address whether common-law privacy applies to any of the requested information. Under the doctrine of common-law privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. 540 S.W.2d at 685; Open Records Decision No. 611 (1992) at 1. In the past, this office has concluded that the doctrine of common-law privacy does not protect an applicant's or employee's educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; and social security numbers. See generally Open Records Decision No. 455 (1987) at 8. We have examined and reviewed the submitted information, however, we conclude that the submitted documents do not contain any information that is intimate or embarrassing. Moreover, the public has a legitimate interest in this information. See Open Records Decision No. 455 (1987) at 9 (public has an interest in applicant's past employment record and

suitability for position in question). Accordingly, the school district may not withhold such information based on section 552.101 of the Government Code in conjunction with common-law or constitutional privacy. However, the school district should carefully review the submitted records and redact any information which is confidential.⁴

In our final analysis pursuant to section 552.101, we note that one of the records you submitted to this office for review includes an Employment Eligibility Verification Form I-9.⁵ Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 is confidential under section 552.101 of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Finally, we note that the requested records also contain information that may be *confidential and excepted from disclosure under section 552.117(1)*. Section 552.117 excepts from disclosure:

information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public official has family members of public employees who request that this information be kept confidential under section 552.024. You may not, however, withhold the information of a current or former employee or official who made the request for confidentiality under section 552.024 after this request for information was made.


⁴We caution that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. For your convenience, we have included for your review a sampling of common types of information deemed confidential.

⁵Although you did not claim any exception for this document, this office will raise section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481(1987), 480 (1987).

Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this statute. Therefore, we can only conclude that section 552.117 requires you to withhold the information of a current or former official who requested that this information be kept confidential under section 552.024.⁶ See Open Records Decision Nos. 622 (1994), 455 (1987).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101530

Enclosures: Marked documents
List of Confidential Information
Open Records Decision No. 643 (1996)

cc: Ms. Kaylois Henry
Dallas Observer
P. O. Box 190289
Dallas, Texas 75219
(w/List of Confidential Information, Open Records Decision No. 643 (1996))

⁶We note that federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).